

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 MAY 21 P 1:01

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAY 21 2010

DOCKETED BY

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In the matter of:

KENNETH WILLIAMS (d/b/a "KWD
COMMERCIAL CONSTRUCTION
SERVICES"), and JANE DOE WILLIAMS,
husband and wife,

Respondents.

DOCKET NO. S-20743A-10-0211

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent KENNETH WILLIAMS (d/b/a "KWD COMMERCIAL CONSTRUCTION SERVICES") is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act") and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Respondent KENNETH WILLIAMS (d/b/a "KWD COMMERCIAL CONSTRUCTION SERVICES") ("WILLIAMS") is a married man and a Dallas, Texas resident.

1 At all times relevant, WILLIAMS has been offering securities in the form of investment contracts
2 and/or notes within Arizona. WILLIAMS has not been registered as a securities salesman or dealer
3 by the Commission.

4 3. Respondent JANE DOE WILLIAMS ("SPOUSE") has been at all relevant times the
5 spouse of WILLIAMS. SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for
6 purposes of determining the liability of the WILLIAMS and SPOUSE marital community.

7 4. At all relevant times, WILLIAMS has been acting for his individual benefit, and for
8 the benefit or in furtherance of the WILLIAMS and SPOUSE marital community.

9 **III.**

10 **FACTS**

11 5. Since at least May 4, 2010, to the present, WILLIAMS has been offering
12 unregistered securities in the form of investment contracts and/or notes within Arizona by
13 publically advertising them on an Internet website known as Craig's List/Phoenix (the "Craig's
14 List Advertisement(s)").

15 6. WILLIAMS published a Craig's List Advertisement on the Internet on or about
16 May 4, 2010, to the present, and it states as follows:

17 *****Invest in Solar and Green Energy*** (Texas)**

18 Hello, Dallas based Solar and Energy efficiency company seeking outside investors
19 / silent partners for continued growth and expansion. This is a very hot area of the
20 economy and we are poised for tremendous growth! Great product array offered for
21 commercial and residential consumers. Our services qualify for government rebates
and tax credit offerings. If interested get in touch!
(PostingID: 1723796819)

22 (emphasis in originals).

23 7. On May 6, 2010, an Arizona resident responded to this Craig's List Advertisement
24 by sending an email to WILLIAMS in which he expressed his interest in learning more about
25 WILLIAMS' business operations and the investment.

1 8. On May 7, 2010, WILLIAMS sent the potential Arizona investor a responsive
2 email in which he described the investment:

3 Hello, and thank you for your interest...I am looking for individuals or groups
4 interested in Investing [sic] / partnering to increase my cash base to work from. I
5 concentrate on Texas and surrounding states...Our profit margins are high and my
6 proposed payback of any invested money is as follows:

7 I will pay you 15% of investment each month for 12 months, so at the end you have
8 been paid back 180% of the amount you invested, resulting in 80% profit in 12
9 months time, so in a years [sic] time that's a great ROI.

10 (the "Investment(s)"). WILLIAMS' May 7, 2010, email further explained to the potential
11 Arizona investor that WILLIAMS would pool investors' Investment money together to operate
12 and promote his solar and energy efficiency business operations, and to increase his business
13 "advertising and marketing as well as cash flow maintenance."

14 9. WILLIAMS' May 7, 2010, email further described the services that he would
15 provide on behalf of investors, including: (a) working with "distributors and installers on a wide
16 arrange of solar and green products;" (b) preparing a marketing campaign targeted towards
17 "residential and commercial customers;" (c) "bidding on commercial and government projects;"
18 and (d) selling "Solar Energy Solutions" to, and consulting with customers including the sale of
19 solar energy panels, solar thermal pool and hot water heating systems, solar attic fans, tank-less
20 water heaters, wind energy systems, geo thermal HVAC systems, rainwater harvesting and grey
21 water recycling and the installation of energy efficient roofing, windows, siding and insulation
22 (the "Business").

23 10. The potential Arizona investor sent WILLIAMS a second email on May 12, 2010,
24 that requested additional information regarding how the Investment would be documented. In
25 response, WILLIAMS emailed the potential Arizona investor on May 13, 2010, and stated:

26 Hello, attached is the promissory note. [Investment] funds are to be used in the
operations [sic] and marketing of KWD's residential and commercial solar and
energy efficiency operations.

Attached to WILLIAMS' May 13, 2010, email was a one page, unsecured "PROMISSORY NOTE" made and signed by WILLIAMS in his individual capacity (the "Note").

11. Without limitation, the Note states that: (a) the "borrower" is WILLIAMS, and that he is the "owner" of a company called, "KWD Commercial Construction Services;"¹ (b) the Note "shall be paid in equal installments of 15% of money lent, due the first day of each month, for 12 months, so at the termination of repayment 180% of loan has been repaid;" and (c) that if more than one borrower (*i.e.*, "WILLIAMS") makes and executes the Note, each borrower will be jointly and severally liable with the other to the Investment investor.

12. WILLIAMS published another, similar Craig's List Advertisement on the Internet on May 14, 2010, to the present, that states as follows:

*****Profit from Solar Energy*** (Phoenix)**

Hello, I am looking for individuals to invest / partner with a growing solar and energy efficiency sale & installation company. Make monthly income off of our business activities! If interested get in touch!! (PostingID: 1740450930)

(emphasis in originals). Like the May 4, 2010, Craig's List Advertisement discussed above, this May 14, 2010, Craig's List Advertisement was viewed by a potential Arizona investor.

13. Although WILLIAMS represented to offerees and investors that his solar Business "profit margins are high" and that the Investments pay a profit of eighty percent per year, WILLIAMS further failed to disclose to them a reasonable basis for such Business profit margins, and Investment profit projections and promises including, without limitation: (a) any Business profit and loss statements; (b) his past, present or future Business contracts, revenues and net profit margins; (c) any purported competitive advantages enjoyed by WILLIAMS' Business such as the nature and extent of any federal or state tax rebates, credits or exemptions enjoyed by his Business or his customers; (d) the nature and extent of his existing Business customer base; (e) the amount of time WILLIAMS and/or his Business has been selling and installing solar and energy efficient

¹ As of the date of this Temporary Order to Cease and Desist ("TC&D"), the Division was unable to locate any formal incorporation documents filed by WILLIAMS on behalf of KWD Commercial Construction Services ("KWD"). The Division may seek to amend this TC&D to include such incorporation information regarding KWD as appropriate.

1 products, and providing related services; and (f) the nature and extent of WILLIAMS and/or his
2 Business' assets and liabilities and/or cash reserves.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

5 **(Offer and Sale of Unregistered Securities)**

6 14. From at least May 4, 2010, to the present, WILLIAMS has been publically offering
7 or selling securities in the form of investment contracts and/or notes, within Arizona.

8 15. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
9 Securities Act.

10 16. This conduct violates A.R.S. § 44-1841.

11 **V.**

12 **VIOLATION OF A.R.S. § 44-1842**

13 **(Transactions by Unregistered Dealers or Salesmen)**

14 17. WILLIAMS is offering or selling securities within Arizona while not registered as a
15 dealer or salesman pursuant to Article 9 of the Securities Act.

16 18. This conduct violates A.R.S. § 44-1842.

17 **VI.**

18 **VIOLATION OF A.R.S. § 44-1991**

19 **(Fraud in Connection with the Offer or Sale of Securities)**

20 19. In connection with the offer or sale of securities within or from Arizona,
21 WILLIAMS is directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)
22 making untrue statements of material fact or omitting to state material facts that are necessary in
23 order to make the statements made not misleading in light of the circumstances under which they are
24 made; or (iii) engaging in transactions, practices, or courses of business that operate or would
25 operate as a fraud or deceit upon offerees and investors. WILLIAMS' conduct includes, but is not
26 limited to, the following:

14 VII.

Cease and Desist from Violating the Securities Act [or IM Act]

19 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
20 WILLIAMS, his agents, servants, employees, successors, assigns, and those persons in active
21 concert or participation with WILLIAMS CEASE AND DESIST from any violations of the
22 Securities Act.

25 IT IS FURTHER ORDERED that this Order shall be effective immediately.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order WILLIAMS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order WILLIAMS to take affirmative action to correct the conditions resulting from WILLIAMS' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order WILLIAMS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of WILLIAMS and SPOUSE is subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

WILLIAMS and SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If WILLIAMS or SPOUSE request a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,

1 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
2 **Order shall remain effective from the date a hearing is requested until a decision is entered.**

3 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
4 with written findings of fact and conclusions of law. A permanent Order may include ordering
5 restitution, assessing administrative penalties, or other action.

6 If a request for hearing is not timely made, the Division will request that the Commission
7 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
8 may include ordering restitution, assessing administrative penalties, or other relief.

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
11 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
12 Requests should be made as early as possible to allow time to arrange the accommodation.

13 **X.**

14 **ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if WILLIAMS or SPOUSE requests a hearing, the
16 requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
17 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
18 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
19 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
20 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

21 Additionally, the answering respondent must serve the Answer upon the Division.
22 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
23 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
24 Arizona, 85007, addressed to Mike Dailey.

25 The Answer shall contain an admission or denial of each allegation in this Temporary
26 Order and Notice and the original signature of the answering respondent or the respondent's

1 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
2 of an allegation. An allegation not denied shall be considered admitted.

3 When the answering respondent intends in good faith to deny only a part or a qualification
4 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
5 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

6 The officer presiding over the hearing may grant relief from the requirement to file an
7 Answer for good cause shown.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 21st day of May,
9 2010.

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12 Mark Dinell
13 Assistant Director of Securities
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